
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	File Number: EB-03-NY-380
)	
Moises Cabrera)	NAL/Acct. No: 200632380002
Juan Cabrera)	
)	FRN: 0013 3361 10
New York, NY)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 19, 2005

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Moises Cabrera and Juan Cabrera apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating an unlicensed radio transmitter on the frequency 89.7 MHz. We conclude, pursuant to Section 503(b) of Act,² that Moises Cabrera and Juan Cabrera are apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On December 27, 2004, the New York Office of the FCC's Enforcement Bureau received a complaint of an illegal broadcast station operating on 89.7 MHz in New York, New York.

3. On December 29, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 89.7 MHz in New York, New York. The agent observed a radio broadcast on 89.7 MHz and identified the source of the transmissions as an FM broadcasting antenna on a building at 501 West 207th Street, New York, NY 10034. The agent observed an FM broadcast antenna mounted on the roof. The agent took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission's Rules ("Rules")³ and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for operation on 89.7 MHz in New York, New York.

4. On that same day, after completing the field strength measurements, the agent went to the second floor of 501 West 207th Street to conduct a station inspection. Upon entering the building, the agent

¹47 U.S.C. § 301.

²47 U.S.C. § 503(b).

³Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed Part 15 transmitter.

noted a sign for an organization that read “Iglesia Pentecostal Centro Evangelistico Movimiento Misionero.”⁴ The agent conducted an inspection with Juan Cabrera, Moises Cabrera’s son, who was present in the studio and operating the station. The agent observed radio station studio equipment, including an operational FM transmitter with a visual display showing the frequency assignment 89.7 MHz. Prior to leaving the area, the agent monitored 89.7 MHz and noted that the station went off the air.

5. On December 30, 2004, the New York office sent a Warning Letter, by First Class and Certified Mail Return Receipt Requested, to Radio Movimiento Mision Vida, Attn: Juan Cabrera and Moises Cabrera, for unlicensed operation on the frequency 89.7 MHz.⁵ The New York Office received the U. S. Post Office return receipt, signed by Juan Cabrera, confirming that the letter was delivered and received on January 4, 2005. The New York Office did not receive a response to the Warning Letter.

6. On March 3, 7, and 8, 2005, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 89.7 MHz in New York, New York. The agent observed a radio broadcast on 89.7 MHz, and identified the source of the transmissions as an FM broadcasting antenna on a building at 501 West 207th Street, New York, NY 10034. The agent also observed an FM broadcast antenna mounted on the roof. The agent took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for operation on 89.7 MHz in New York, New York.

7. After completing the field strength measurements on March 8, the agents went to the second floor of 501 West 207th Street and conducted a station inspection with Moises and Juan Cabrera. The agents observed radio station studio equipment, including an operational FM transmitter. In response to questions from the agents, Moises Cabrera and Juan Cabrera admitted to operating the station. They reported that, using the roof antenna, they had been operating the station with the current transmitter for about one year and previously operated the station with a higher power transmitter. When Juan Cabrera turned off the transmitter in the agents’ presence, the station went off the air. The agents informed Moises and Juan Cabrera that they did not have authority to operate the station and advised them of the penalties for unlicensed operation.

8. On May 5, 2005, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 89.7 MHz in New York, New York. The agent observed a radio broadcast on 89.7 MHz, and identified the source of the transmissions as an FM broadcasting antenna on a building at 501 West 207th Street, New York, NY 10034. The antenna was mounted at a much lower height on the roof than previously observed and could only be seen from a higher vantage point. The agent took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)⁴ and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for operation on 89.7 MHz in New York, New York.

III. DISCUSSION

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been

⁴The agent subsequently confirmed that “Centro Evangelistico M.M.M. Inc.” is a non-profit corporation registered in New York State with a mailing address of 501 West 207th Street, New York, NY 10040. The website for the church, “Movimiento Misionero Mundial – New York,” lists Moises Cabrera as the pastor of the church.

⁵The unlicensed radio station apparently operated by Moises and Juan Cabrera identifies as “Radio Movimiento Mision Vida.”

interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

10. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. Agents from the New York Office positively identified the source of an FM signal transmitting on 89.7 MHz on December 29, 2004, and March 3, March 7, March 8, and May 5, 2005 as a building at 501 West 207th Street, New York, NY. On those dates, agents also conducted field strength measurements and determined the signal exceeded the allowable limit for a low power non-licensed transmitter. A license therefore was required for operation of this station. The FCC’s records showed that no license had been issued for an FM station on 89.7 MHz in New York, NY. Moises and Juan Cabrera admitted to operating the station and continued to operate the station after being warned orally and in writing of the possible penalties for unlicensed operation.

11. Based on the evidence before us, we find that Moises Cabrera and Juan Cabrera apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on 89.7 MHz in New York, NY on December 29, 2004, and March 3, March 7, March 8, and May 5, 2005, without a Commission authorization.

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Moises Cabrera and Juan Cabrera are apparently jointly liable for a \$10,000 forfeiture.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Moises Cabrera and Juan Cabrera are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁰

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules,

⁶Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁸12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁹47 U.S.C. § 503(b)(2)(D).

¹⁰47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 U.S.C. § 301.

Federal Communications Commission

within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Moises Cabrera and Juan Cabrera **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁰

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Moises and Juan Cabrera at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau

¹⁰See 47 C.F.R. § 1.1914.